

HIGH TECH BROADBAND COALITION



September 25, 2003

Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.,
Washington, DC 20554

Re:

In the Matter of Appropriate Framework for Broadband Access to the Internet
over Wireline Facilities, CC Docket No. 02-33

Universal Service Obligations of Broadband Providers, CC Docket No. 02-33

Computer III Further Remand Proceedings: Bell Operating Company Provision of
Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and
ONA Safeguards and Requirements, CC Dockets Nos. 95-20, 98-10

Appropriate Regulatory Treatment for Broadband Access to the Internet over
Cable Facilities, CS Docket No. 02-52

Notice of Written Ex Parte Presentation

Dear Chairman Powell:

The nation and its economy need a public policy that enhances broadband investment, competition and growth. Broadband and data services are key areas of growth in the telecom sector and will prove to be an important part of the expansion of the U.S. economy. The right broadband policy would be a major catalyst for the economy, resulting in an extra infusion of investment and rebound in high tech job growth. By adopting a market-oriented national policy, the Commission can help start a virtuous cycle of investment and innovation – one that will lead not only to widespread

access to next-generation broadband services but also to meaningful facilities-based competition in broadband markets. A single national approach is crucial.

While the decision in the Triennial Review is a key step towards the development of a national broadband policy, the Commission still has significant work to do. We are writing today to urge the Commission to continue to advance the process. By expeditiously concluding the wireline and cable modem Title I broadband proceedings, the Commission can provide a solid framework for business decision-making and substantially lessen the uncertainty that currently undermines the business case for broadband investment. To that end, we want to clarify the position of the High Tech Broadband Coalition with regard to the “consumer connectivity” and ISP access issues raised in these proceedings. We are enclosing a statement of principles that sets out HTBC’s position on these issues..

We continue to believe that the Commission should explicitly endorse the HTBC’s connectivity principles in its decisions in these proceedings. These principles identify those disclosures and essential service features— such as freedom to access content, use applications and attach devices—we believe are necessary for broadband consumers to derive the full benefit of the Internet and that a competitive broadband access market would provide.

We do not intend that these principles be read in a rigid fashion. We recognize that giving broadband providers the freedom to enter into commercial arrangements could benefit consumers. For example, while providers should not degrade their generally available service to disadvantage a particular website, we do not intend to discourage broadband providers from entering into customized commercial arrangements with content, application and service companies that might provide faster or more reliable service. These kinds of arrangements can encourage the growth of the broadband market. Similarly, providers should be free to develop a range of service plans from which consumers can select the best combination of price, services and features. .

It is premature to conclude that principles are actually being undermined, thus it is not now necessary for the Commission to promulgate rules in this area. However, we strongly believe that the FCC should vigilantly monitor cable and DSL broadband services as they develop, expeditiously review any complaint and reassess the marketplace in two years to assure that broadband consumers have unrestricted access to the Internet.

At the same time, we believe the Commission should adopt its tentative conclusion that wireline broadband Internet access is an information service that should be subject only to minimal regulation. Also, broadband providers should also be permitted to offer a transport service separate from Internet access on a private carriage basis under Title I. Consistent with this framework, the Commission should allow the market for wireline broadband service to develop free from the *Computer Inquiry* rules.

However, to give ISPs and wireline broadband providers an opportunity to negotiate market-based agreements, the Commission should maintain two “safe harbor”

requirements for a transition period. First, the wireline broadband providers should honor existing DSL transport term plans (whether tariffed or contracted) with unaffiliated ISPs. Second, wireline broadband providers should make available to unaffiliated ISPs a basic broadband transport service with the same basic functionality, at the same cost and based on the same volume, terms and conditions that it provides to its affiliated ISPs.

We now believe that the Commission should sunset these safe harbor requirements regarding ISP access no later than two years from the effective date of the FCC's order. To the extent that the Commission imposes any such requirements on broadband providers thereafter, such requirements should apply to cable and wireline broadband platforms in a competitively neutral fashion.

Pursuant to Section 1.1206(b) of the Commission's Rules, an electronic copy of this letter is being submitted to the Secretary's Office and those listed below. We would welcome the opportunity to address any questions that you or your staff might have.

Respectfully submitted,

Cc:

Ms. Marlene H. Dortch, Secretary
Commissioner Kathleen Q. Abernathy
Commissioner Jonathan S. Adelstein
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Kenneth Ferree, Chief Mass Media Bureau
William Maher, Chief Wireline Competition Bureau
Robert Pepper, Office of Strategic Plans and Policy
Brian Tramont
Jon Cody
Christopher Libertelli
Mathew Brill
Daniel Gonzalez
Jessica Rozenworcel
Lisa Zaina